

1 Steven E. Springer, SBN 180874
Law Offices of Steven E. Springer
2 16360 Monterey Road, Ste 180
Morgan Hill, CA 95037
3 Tele 408-779-4700, Fax 408-779-4483

4 Attorneys for Defendant: Pacific Coast Recycling

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN JOSE DIVISION
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10 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, a
11 Pennsylvania Corporation

12 Plaintiff,

13 v.

14 RESOURCE DEVELOPMENT SERVICES,
INC., JAMES LUCERO, et. al,

15 Defendants

No. CV 10-01324 JF

**NOTICE OF JOINDER BY
DEFENDANT PACIFIC COAST
RECYCLING IN THE PENDING
MOTION TO DISMISS THE 2ND
AMENDED COMPLAINT AND
MOTION TO DISMISS**

**Judge: The Hon. Jeremy Fogel
Time: 9:00 AM
Date: April 15, 2011
Ctrm: 3
Floor: 5**

Action Filed: March 28, 2010
No Trial Date

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20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that defendant PACIFIC COAST RECYCLING, (hereinafter
22 "PCR"), hereby joins in the pending Motion to Dismiss and Motion to Strike Plaintiff's 2nd
23 Amended Complaint filed on January 31, 2011, by Defendant Environmental Resource Recovery,
24 Inc., dba and sued as Valley Recycling. The matter will be heard by this Court on April 15, 2011,
25 at 9:00 a.m., or as soon thereafter as the matter can be heard, in Courtroom NO. 3 on the fifth
26 floor of the United States Courthouse, located at 280 South 1st Street in San Jose, California
27 95113.

28 PCR requests that its joinder in the motion be considered at the April 15, 2011 hearing.

1 **I. INTRODUCTION**

2 PCR moves for dismissal of the Second Amended Complaint and to strike improperly
3 included paragraphs therein on the same grounds as being argued by Defendant Valley Recycling
4 in its motion for the same relief.

5 **II. REQUEST FOR JUDICIAL NOTICE AND INCORPORATION BY REFERENCE**

6 In the interest of Judicial Economy PCR incorporates herein by reference the
7 Memorandum of Points and Authorities in Support of Defendant Valley Recycling's Motion to
8 Dismiss Plaintiff's Second Amended Complaint and Motion to Strike (Filed January 31, 2011;
9 Document No. 147) and the supporting Request for Judicial Notice (Filed January 31, 2001;
10 Document No. 148), because the arguments set forth therein apply with equal force to PCR.
11 Additionally, this brief has been intentionally drafted following the outlines of preceding Joinder
12 Motions in the hope of saving the Court and all parties time in their review of this brief. The
13 balance of this Joinder Motion briefly discusses the facts as they pertain to PCR.

14 **III. BACKGROUND OF PACIFIC COAST RECYCLING**

15 Defendant PCR is a business that has operated a recycling center in California for many
16 years. PCR's sole connection to these proceedings is that it contracted with RESOURCE
17 DEVELOPMENT SERVICES, INC. (hereinafter "RDS") to dispose of various forms of material
18 at Waste Management Corp.'s Kirby Canyon Landfill (hereinafter "KCL"). All such transactions
19 have been made in the ordinary and proper course of business; PCR has not been a part of any
20 fraudulent scheme.

21 **IV. ARGUMENT AND CONCLUSION**

22 PCR is specifically mentioned in the Second Amended Complaint only 5 times
23 (excluding the caption, the headings for the 4th through the 7th Causes of Action, the signature line
24 for its attorney, and the proof of service). These 5 instances occur in ¶21 identifying PCR's
25 corporate existence, in ¶ 58 identifying PCR with the other defendants as a "trucking company
26 defendant", in ¶ 66 with other company defendants alleging PCR knew of the proper procedures
27 for processing weight tickets, and grouped in ¶ 99 with the other defendants in a general
28 allegation of engaging in a conspiracy.

1 The only other place in which PCR is specifically referenced is ¶ 64 where it is alleged :
 2 “ ...that KCL employees permitted unprocessed and misclassified loads to enter KCL in
 3 exchange for improper monetary payments ...made to them directly by some of the trucking
 4 company defendants, including but not limited to Pacific Coast Recycling...

5 If PCR was answering the 2nd Amended Complaint, it would admit to its corporate
 6 existence, that it engage in trucking waste material, and that it is a defendant, however, PCR
 7 could only and would obviously deny the general allegations of conspiracy. This leave only one
 8 specific allegations against PCR in ¶64 of the 2nd Amended Complaint.

9 Paragraph 64 alleges that PCR knew the proper procedures for weight tickets and did not
 10 follow the procedures. This allegation is based on the naked assertion that there is one universal
 11 procedure for waste disposal and any person or company who does not follow this universal
 12 procedure must somehow be involved in inappropriate behavior.

13 The allegations against PCR in ¶64 are yet another example of Plaintiff's desire to
 14 attribute fraudulent intentions to otherwise innocent conduct. In ¶64 Plaintiffs' allege

15 ...that KCL employees permitted unprocessed and misclassified loads to enter KCL in exchange
 16 for improper monetary payments ...made to them directly by some of the trucking company
 17 defendants, including but not limited to Pacific Coast Recycling, A&A Recycling Disposal, All
 18 Trash Recycling, Gibson Resource Group, and Nogalera Trucking.

19 Assuming Arguendo that PCR made some of the alleged payments (which it did not), the
 20 payment(s) to KCL employees by some of the Trucking Company Defendants or their
 21 representatives would be wholly consistent with ¶45 of Plaintiff's 2nd Amended Complaint:

22 From time to time, however, situations would arise where RDS's account with KCL was delinquent,
 23 closed, and/or over the credit limit, and therefore, in those instances, **the trucking company**
 24 **defendants were required to directly submit payments to Waste Management** before being
 25 permitted to dispose of loads at KCL. (2nd Amended Complaint ¶45) (emphasis added)

26 Plaintiff's 2nd Amended Complaint at ¶64 does not provide any information regarding
 27 when said alleged improper transfers took place over the three year period in Plaintiff's
 28 pleadings. The Trucking Company representatives nor the KCL representatives involved in these
 alleged improper payments were not identified and lastly no monetary information was provided.
 Defendant PCR can not hope to defend itself from an allegation such as this which has a manifest
 lack of particularity.

1 For the same reasons set forth in Valley Recycling's Memorandum of Points and
2 Authorities and this Brief on Joinder, the 2ND Amended Complaint should be dismissed and/or
3 restated more definitely as against Pacific Coast Recycling and Plaintiff's improperly repeated
4 request for punitive damages as set forth in Paragraph 89 in Plaintiff's Second Amended
5 Complaint should be stricken.

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8 Respectfully submitted,

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10 DATED: February 9, 2011

Law Offices of Steven E. Springer

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13 Steven E. Springer
14 Attorneys for Pacific Coast Recycling, Inc.
15 erroneously sued as Pacific Coast Recycling
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